

REMARKS

An Information Disclosure Statement is submitted herewith.

In the Office Action dated November 14, 2006, the Specification was objected to; claims 44-62 were rejected under § 112, ¶ 2; claims 44-62 were rejected under 35 U.S.C. § 102 over D. Keim et al., "Pixel Bar Charts: A New Technique for Visualizing Large Multi-Attribute Data Sets Without Aggregation," HP Technical Report, April 2001<sup>1</sup> (Keim HP Technical Reference); claims 44-62 were rejected under § 102 over M. Ankerst et al., "Towards an Effective Cooperation of the Computer and the User for Classification," Proc. 6<sup>th</sup> Int. Conf. on Knowledge Discovery and Data Mining, (Ankerst); and claims 44-62 were rejected under § 102 over M.C. Hao et al., "Visual Mining of E-customer Behavior Using Pixel Bar Charts," HP Technical Report, June 20, 2001 (Hao HP Technical Reference);.

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<sup>1</sup> The April 11, 2001 publication date noted by the Office Action as the publication date for the Keim HP Technical Reference is incorrect. In the Keim HP Technical Reference, the April 11, 2001 date was indicated as being an "Internal Accession Date Only," which refers to internal access within HP. The external date appears to be "20010425" as indicated on the bibliographic sheet attached to the front of the Keim HP Technical Reference.

OBJECTION TO THE SPECIFICATION

The Office Action objected to language “utilize of” on page 4, at line 11. It is noted that this language actually appears on line 11 of page 1, not page 4. Applicant has made the appropriate correction. Therefore, withdrawal of the objection is respectfully requested.

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REJECTION UNDER 35 U.S.C. § 112, ¶ 2

Each of the independent claims have been amended to address the § 112 rejection.  
Therefore, withdrawal of the § 112 rejection is respectfully requested.

### SUMMARY OF TELEPHONIC INTERVIEW

In a telephonic interview conducted between the undersigned and the Examiner on March 6, 2007, a discussion was made regarding how a Rule 132 declaration can overcome a § 102(a) rejection over an inventor's own publication. Applicant pointed the Examiner specifically to M.P.E.P. § 716.10 (8<sup>th</sup> ed., Rev. 5), at 700-300, 301. In particular, Applicant directed the Examiner's attention to Example 2 on page 700-301, which indicates that where the author of the reference is an entity different from the applicant of the application, that such a reference can be overcome by submitting a Rule 132 declaration "to show that the relevant portions of the reference originated with or were obtained from applicant." However, the Examiner stated that this passage of the M.P.E.P. is not applicable to the present application. The Examiner maintained that a Rule 132 declaration can be submitted only in the situation where the prior reference has an authorship of A, B, C, and the application has an inventorship of A, B—in other words, the Examiner maintained that a Rule 132 Declaration is effective only when the application has a *fewer* number of inventors than the authors listed in the prior reference. The Examiner argued that in the present scenario, the prior reference has authors A, B, C, whereas the application has more inventors, A, B, C, D. Therefore, the Examiner stated that a Rule 312 Declaration cannot be used to overcome such a reference.

The undersigned argued that this view of the law is incorrect. No agreement was reached regarding this issue.

In the telephonic interview, the rejection of claim 1 over Ankerst was also discussed. The Examiner explained to the undersigned how the Examiner read claim 1 onto Ankerst. No agreement was reached regarding the rejection over Ankerst.

REJECTIONS UNDER 35 U.S.C. § 102

REJECTION OVER THE KEIM HP TECHNICAL REPORT

The Office Action stated that the Declaration Under M.P.E.P. 2132.01 previously submitted was insufficient to overcome the Keim HP Technical Report. In the telephonic interview conducted between the undersigned and the Examiner on March 6, 2007, the Examiner argued that a Rule 132 Declaration would be ineffective to overcome the Keim HP Technical Report because the prior reference has a fewer number of authors than the number of inventors in the present application.

Applicant respectfully disagrees with the Examiner's position that a Rule 132 Declaration cannot be used to overcome the Keim HP Technical Report. The Examiner has not pointed to any rule or law that prohibits the use of a Rule 132 Declaration in the present context.

In fact, the Federal Circuit has held as follows:

When the joint and sole inventions are related, as they are here, A commonly discloses the invention of A & B in the course of describing his sole invention and when he so describes the *invention* of A & B he is not disclosing "prior art" to the A & B invention, even if he has legal status as "another." ....

*In re Kaplan*, 789 F.2d 1574, 1576, 229 U.S.P.Q. 678 (Fed. Cir. 1986).

In other words, according to the Federal Circuit in *In re Kaplan*, even though a prior reference had fewer authors than the application-at-issue (the prior reference has inventor A, whereas the application has inventors A and B), the Federal Circuit held that the prior reference can be removed as a reference if the prior reference describes the invention of A and B.

Similarly, in a C.C.P.A. case, the court stated that where inventor A commonly discloses (in an earlier reference) the invention of A and B, "he is not disclosing 'prior art' to the A and B invention, even if he has legal status as 'another'." *In re Land & Rogers*, 368 F.2d 866, 879, 151 U.S.P.Q. 621 (C.C.P.A. 1966).

In fact, in another C.C.P.A. case, *In re Facius*, 408 F.2d 1396, 161 U.S.P.Q. 294 (Fed. Cir. 1969), a discussion was made of one case in which a patent by one inventor (Dewey) was used to reject under § 102(e) an application by Mathews. *Id.* at 1405. Note that in this case, the prior reference had an author (Dewey) that was not even listed as an inventor on the application

that was being rejected (which named only Mathews as the inventor). However, the court in *In re Facius* stated that an affidavit filed by Dewey stating that the relevant, unclaimed subject matter disclosed in the prior reference was not invented by Dewey, but was first disclosed to Dewey by Mathews, would be sufficient to overcome the § 102 rejection. *Id.*

Therefore, the Examiner's position that a Rule 132 Declaration cannot be used in the context of the present application, where the application names more inventors than the applied reference (Keim HP Technical Report) finds no support in any rule or law, and in fact, is directly inconsistent with the law as expressed in Federal Circuit and C.C.P.A. cases.

Applicant is submitting a Rule 132 Declaration (attached hereto) which attributes the content of the Keim HP Technical Report to the Applicant of the present application (Ming C. Hao, Umeshwar Dayal, Meichun Hsu, Daniel A. Keim, Adrian Krug, and Julian Ladisch). The attached Rule 132 Declaration states that the entire content of the Keim HP Technical Report originated with or was obtained from the Applicant (including inventors Ming C. Hao, Umeshwar Dayal, Meichun Hsu, Daniel A. Keim, Adrian Krug, and Julian Ladisch) of the present application. As set forth in M.P.E.P. § 716.10, such attribution of a prior reference to the applicant is sufficient to remove the prior reference (in this case the Keim HP Technical Report) as prior art. *See* M.P.E.P. § 716.10, at 700-301.

The attached Rule 132 Declaration also states that the authors of the Keim HP Technical Report derived their knowledge of the subject matter described in the Keim HP Technical Report from the Applicant (including inventors Ming C. Hao, Umeshwar Dayal, Meichun Hsu, Daniel A. Keim, Adrian Krug, and Julian Ladisch) of the present application. As provided by M.P.E.P. § 2132.01, a Rule 132 Declaration that shows derivation of the subject matter of the prior reference from applicant is effective to remove the prior reference as prior art.

The attached Rule 132 Declaration also states that the Keim HP Technical Report describes the work of the Applicant (including inventors Ming C. Hao, Umeshwar Dayal, Meichun Hsu, Daniel A. Keim, Adrian Krug, and Julian Ladisch) of the present application. As provided by M.P.E.P. § 715.01(c), this is sufficient to remove the Keim HP Technical Report as a prior art reference.

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In view of the foregoing, withdrawal of the § 102 rejection of the claims over the Keim HP Technical Report is respectfully requested, since the Keim HP Technical Report does not constitute prior art.

### REJECTION OVER ANKERST

It is respectfully submitted that amended claim 44 is clearly not anticipated by Ankerst. The Office Action indicated that the last row of the pixel bar charts of Fig. 3 “represents a pixel bar chart which is particularly sorted by the attribute 120.” 11/14/2006 Office Action at 3, 11. Thus, according to the Office Action, each line depicted in Fig. 3 is considered a separate pixel bar chart. The Office Action also considered that within each of these pixel bar charts, pixels are included that are sorted by a corresponding attribute (such as attribute 120 in the last row of Fig. 3).

Claim 44 recites constructing a pixel bar chart by partitioning the record-assigned pixels into groups along a first axis of the pixel bar chart according to a first dividing attribute, partitioning the record-assigned pixels in the groups into sub-groups along a second axis of the pixel bar chart according to a second dividing attribute, and after partitioning into the sub-groups, sorting, in each of the sub-groups, the record-assigned pixels according to a first ordering attribute along the first axis of the pixel bar chart, and according to a second ordering attribute along the second axis of the bar chart. Within the pixel bar chart that is the last row of the pixel bar chart of Fig. 3 in Ankerst, there is no partitioning of pixels into groups and sub-groups along two attributes in two axes, and ordering along first and second axes according to first and second ordering attributes within each sub-group, as recited in claim 44.

Therefore, it is respectfully submitted that claim 44 is not anticipated by Ankerst.

Amended independent claims 50 and 56 are similarly allowable over Ankerst.

New independent claim 81 is also allowable over Ankerst, which fails to disclose assigning records to respective data points of a pixel bar chart, and partitioning the data points into groups and sub-groups according to respective first and second dividing attributes. Nor does Ankerst disclose sorting, in each sub-group, the data points according to first and second ordering attributes.

Dependent claims, including newly added dependent claims 63-80 and 82, are allowable for at least the same reasons as corresponding independent claims.



REJECTION OVER THE HAO HP TECHNICAL REPORT

Amended independent claims 44, 50, and 56, and new claim 81, are also not anticipated by the Hao HP Technical Report. With respect to claims 44, 50, and 56, the Hao HP Technical Report does not disclose partitioning the record-assigned pixels into groups along a first axis of the pixel bar chart according to a first dividing attribute, partitioning the record-assigned pixels in the groups into sub-groups along a second axis of the pixel bar chart according to a second dividing attribute, and after partitioning into the sub-groups, sorting, in each of the sub-groups, the record-assigned pixels according to a first ordering attribute along the first axis of the pixel bar chart, and according to a second ordering attribute along the second axis of the bar chart.

With respect to claim 81, the Hao HP Technical Report does not disclose assigning records to respective data points of a pixel bar chart, and partitioning the data points into groups and sub-groups according to respective first and second dividing attributes, and sorting, in each sub-group, the data points according to first and second ordering attributes.

Dependent claims are allowable over the Hao HP Technical Report for at least the same reasons as corresponding claims.

Allowance of all claims is respectfully requested. The Commissioner is authorized to charge any additional fees and/or credit any overpayment to Deposit Account No. 08-2025 (10014772-1).

Respectfully submitted,

Date: \_\_\_\_\_

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